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MEMORANDUM FOR: REGIONAL ADMINISTRATORS
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FSS ASSISTANT REGIONAL ADMINISTRATORS
CHIEF FINANCIAL OFFICER (B)
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FROM: JAMES A. WILLIAMS *G. M. Wagner for*
FAS COMMISSIONER (Q)

SUBJECT: TIPS AS WE APPROACH OUR END-OF-YEAR
CONTRACTING CRUNCH

Please provide copies of these tips to all members of the program, contracting and supporting finance and legal offices. These tips apply to all contracts/orders placed in FAS whether for internal GSA requirements or external customer requirements. Nothing that follows is new guidance, if you have questions please refer to the FAR, GSAM and Acquisition Policy letters.

At this time of year while we are working expeditiously to get customer requirements on contract or to exercise options on contracts and orders that expire at the end of the fiscal year, it is important to keep in mind some simple tips that can improve the value provided to our customers and the taxpayers, and achieve compliance with all applicable guidance and better manage our workload over the long term. Essentially, these tips involve doing a better job of preplanning and managing, the requirement, funds and performance periods.

Issues related to contract and/or order funding and periods of performance need appropriate plans to ensure they are applied in the best manner given each specific circumstance. With the current set of tools available in the FAR and the law, we can still do a good job while avoiding unnecessary complications and extreme workloads at the end and beginning of each fiscal year. To be efficient and effective the acquisition team (program officers and contracting officers) must closely coordinate planning and coordination and ensure the acquisition team is aware of funding coupled with limitations on periods of performance and other agency policies. Effective strategic planning around these limitations may assist in structuring contract or order award allowing exercise of options to avoid unnecessary bottlenecks and increased workloads at the end and beginning of each fiscal year. Contract or order clauses and a variety of acquisition policies are available to allow maximum flexibilities and efficiencies,

throughout the acquisition process. As a reminder, contracts and orders are awarded tactically, but should be planned strategically.

TIPS FOR FUNDING AND PERIODS OF PERFORMANCE

For services, what is the right Period of Performance?

Contract or order base periods –

- Is there a continuing need extending for more than one year? If there is, the base period should be as long as possible, consistent with program needs, the type of procurement (services [severable or nonseverable] or commodities), and the authorities tied to the funds.
- If the requirement is funded by an annual appropriation for continuing needs, it is more efficient to make the base period one year, from the date of the award.
- The base period may begin on any date in the fiscal year in which the funds are available.
- If annual appropriations are being used, the base period can be up to one year from the date of contract award for severable services, and extend through the entire period of performance (generally up to five years) for nonseverable services.
- If at all possible do not begin the base period on October 1 nor end your base period on September 30, unless the requirement so dictates. See FAR § 32.703-3 for a description of the flexibilities that acquisition policies allow on this topic.
- Be aware of special appropriations requirements that may be attached to the funds.

Options –

- Rules for the permissible length of option periods are the same as for base periods.
- May be exercised only with funds from the current fiscal year.

How long are funds available?

Different funds have different rules –

- You absolutely must be sure of the type of funds you are spending, either for GSA or on behalf of another agency, and be aware of any time limitations that are attached to those funds.
- GSA appropriations are nearly always annual appropriations (excepting revolving funds). These funds must be obligated during the year for which they were appropriated. Severable services contract base periods cannot extend more than one year after the date of contract award using these funds. Nonseverable services contract base periods can extend for as long as necessary (but normally not longer than 5 years).
- The GSA IT Fund, the General Supply Fund and the PBS Building Fund are revolving funds and are not annual appropriations. These funds are

available for obligation for more than one year and the period of performance for base periods and option periods may exceed one year. However, you must be cautious and observe limitations that are attached to funds provided by other agencies.

- Funds provided by another agency may be annual appropriations or not. For example, "Operations and Maintenance" funds from the Department of Defense are always annual appropriations. If funds provided by another agency are annual appropriations, generally the same rules would apply for establishing the period of performance as are applicable to annual GSA funds. However, be aware of any special funds related requirements cited in the Interagency Agreement that provided those funds.
- Funds provided by another agency may also be active for more than one year. For example "Other Procurement" funds from the Department of Defense may include authority to be obligated at any time up to three years after they are appropriated.

What is incremental funding and what types of contract or order actions can I fund incrementally?

- Incremental funding means that you have awarded a contract and obligated part of the contract price and the contractor must begin work, but you have promised the contractor you will provide the remainder of the funds at a later date.
- The FAR includes policies and a contract or order clause for incremental funding of cost type contracts. There are no FAR policies on incremental funding of fixed price contracts.
- You should not incrementally fund a fixed price contract or order unless you have consulted with counsel. You must be sure to incorporate necessary contractor reporting duties and limitations on government liability that will apply in the event complete funding does not become available.
- If you award an incrementally funded fixed price contract without the necessary clause, you risk creating an Anti-Deficiency Act violation if the additional funds do not become available.
- If you do have the necessary clause concerning incremental funding and you manage the contract properly, you will avoid an Anti-Deficiency Act violation if the additional funds do not become available.
- Proper incremental funding clauses direct the contractor to stop work before the cost incurred plus the termination liability exceeds the amount of incremental funding provided under the contract.
- The Defense Federal Acquisition Regulation Supplement (DFARS) includes policies and a clause for incremental funding of fixed price contracts awarded by the DoD. The GSAR is in the process of evaluating a similar approach for GSA. (The process for creating an interim GSAM clause for incrementally funding fixed price contracts has been initiated but is not complete.)

- If you must incrementally fund a fixed price contract or order awarded with GSA funds, please consult the DFARS and if it applies, use the DFARS clause at § 252.232-7007, Limitation of Government's Obligation, suitably modified with the assistance of counsel.
- If you believe you need to incrementally fund an action awarded on behalf of another agency, be sure first that you are familiar with that agency's policies on incremental funding that you may be required to follow. For example, the DoD policy permits incremental funding on fixed price actions only under limited situations (see DFARS § 232.703-1).
- CAUTION – Some appropriations may prohibit incremental funding of a contract.
- Incremental funding of a contract or order IS NOT the same as making an award subject to the availability of funds. An award subject to availability of funds is an award that is not active until you provide funds at a later date.

What is an award that is "subject to availability of funds"? When should I make an award subject to availability of funds?

- There are two types of awards made subject to the availability of funds. The most common is a contract or order awarded before funds are available, under which no contractor work is authorized until funds are provided at a later date, usually in the fiscal year after award. The other is an indefinite delivery/quantity type of contract under which the initial period of work is funded, but no orders are authorized to be placed in the next fiscal year until the next year's funding is provided.
- You should use the first type of award whenever you want to award a contract ahead of time, but no funds are available. For example, rather than trying to award a contract and begin contractor work on October 1 of a new fiscal year, you may be better off awarding the contract or order earlier, subject to availability of funds. This will let you start the contractor's work by merely modifying the contract to add funds on October 1. Use the clause at FAR § 52.232-18, Availability of Funds.
- You should use the second type of award if you have an indefinite quantity/delivery contract with a period of performance straddling two fiscal years, but you have funds appropriated only for the first fiscal year. This will let you place orders in the first fiscal year and have a seamless transition to the second fiscal year merely by modifying the contract or order to add the funds when they are made available to you. Use the clause at FAR § 52.232-19, Availability of Funds for the Next Fiscal Year. CAUTION – This is not the same as incremental funding. This clause places a limit on the government's ability to place orders in the next fiscal year.

What is a multi-year contract or order and what benefits can they provide GSA?

- A multi-year contract is a specialized long term contract or order that can be used to obtain major non-severable services over a long period, while

funding each year separately. It must be approved by the HCA. It permits a contractor to make substantial capital investments with confidence, and charge even pricing across the entire period of performance, because the government will reimburse those investments if later year funds are not provided. (See FAR 17.1.)

- A multi-year contract permits more economical price proposals than the standard approach of a base period plus options because it allows major contractor investments to be amortized over the entire contract period.
- You should only use a multi-year contract if you are highly confident that you will complete the entire period of performance. The government **MUST** fund each year of the contract if appropriated funds are available, or you must terminate the contract for convenience **AND** pay a substantial cancellation charge. This is not like an option that you can either exercise or not exercise.

How do period of performance and availability of funds come together?

- Severable Services? – Cannot exceed one year for the base period and for each contract option. See FAR § 32.703-3.
- Nonseverable Services? – Not usually subject to a one year limit on the period of performances. See FAR § 32.703-3.
- Can I award a period of performance in excess of the available funds? – Yes, depending on the type of contract requirement and whether you have the necessary contract clauses providing a limitation on the government liability and funding in the future. No, if you do not have the necessary clause providing for future funding. See FAR § 32.702.

cc: Controller, FAS